IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 727 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NATIONAL INSURANCE CO.LTD.

Versus

RAFIK S/O OSMAN RAYMA

Appearance:

MS LILU K BHAYA for Petitioner

RULE SERVED for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 23/04/2001

ORAL JUDGEMENT

Heard Ms. Lilu K. Bhaya learned advocate for the appellant. Respondents are served.

2. This is an appeal under Section 173 of the Motor

Vehicle Act, 1988 (for short "the Act") at the instance of original opponent no.3 - Insurer of the offending vehicle which was involved in the accident in question.

3. The appellant herein has challenged the impugned order and award passed by M.A.C.Tribunal, Kuttch at Gandhidham dated 29.9.2000 in the proceedings of M.A.C.Petition No. 1666 of 1999 under Section 140 of the Act.

It may be noted that impugned award passed under Section 140 of the Act being in the nature of interim award is subject to adjustment against the award which may be passed in the main claim petition being M.A.C.Petition No. 1666 of 1999 pending before the M.A.C.Tribunal, Kuttch at Gandhidham; it would not be just and proper to interfere with the said order and award at this stage of the matter. That no useful purpose would be served by keeping it pending as the impugned award is subject to adjustment of award to be passed in main claim petition by the Tribunal. However, an undertaking of the original claimant - respondent no.1 herein shall be taken so that decision on merits in the matter pending before the Tribunal can be obtained.

The original claimant - respondent no.1 herein shall file an undertaking before the M.A.C.Tribunal, Kuttch at Gandhidham in the proceedings of M.A.C.Petition No. 1666 of 1999 within a period of four weeks that claimant shall not abandon the claim petition nor shall withdraw or shall permitted to be dismissed for default or for any other cause and the claimant shall obtain the decision on merits in the said claim petition.

On the filing of above stated undertaking within a period of four weeks from date of receipt of this order by original claimant - respondent no.1 herein, the amount deposited by the appellant in the Tribunal pursuant to the impugned award including accrued interest and cost shall be permitted to be withdrawn by the original claimant on furnishing appropriate security to the satisfaction of the Tribunal.

4. Subject to above stated observation and direction stated hereinabove, appeal stands dispossed of as dismissed with no order as to costs.

(A.K.Trivedi,J.)

(vipul)